



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 177

J. M. LEDBETTER, JR., ADMINISTRATOR C. T. A.
OF THE ESTATE OF ROBERT L. STEEL, III,
AND THE STATE OF NORTH CAROLINA, AND
THE CLERK OF THE SUPERIOR COURT OF
BLADEN COUNTY, et al., and for the use and
benefit of J. M. LEDBETTER, JR., ADMINISTRA-
TOR C. T. A. OF THE ESTATE OF ROBERT L.
STEEL, III, Petitioners,

FARMERS BANK & TRUST COMPANY, A CORPO-
RATION, AND FEDERAL RESERVE BANK OF
RICHMOND, A CORPORATION, Respondents.

PETITION FOR REHEARING

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AND THE STATE OF NORTH CAROLINA AND
THE CLERK OF THE SUPERIOR COURT OF
BLADEN COUNTY, ex rel., and for the use and
benefit of J. M. LEDBETTER, JR., ADMINISTRA-
TOR C. T. A. OF THE ESTATE OF ROBERT L.
STEELE, III, Petitioners,

v.

FARMERS BANK & TRUST COMPANY, A CORPO-
RATION, AND FEDERAL RESERVE BANK OF
RICHMOND, A CORPORATION, Respondents.

PETITION FOR REHEARING

Reason Assigned for Rehearing

The petitioners respectfully request the Court to grant a rehearing in this cause and grant the petition for a writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit. The reason assigned for rehearing is that the Circuit Court of Appeals failed to follow the applicable decisions rendered by the Supreme Court of North Carolina in the cases of *Dillon v. Winston-Salem* (1942), 221 N. C. 512, 20 S.E. 2d 845, and *Williams v. Blue* (1917), 173 N. C. 452, 92 S. E. 270.¹

¹ Though this is not a diversity of citizenship case (see p. 11 of Petitioners' Reply Brief), it was conceded that the law of North Carolina controlled this question. (R. 20, 142 F. 2d at 149.)

The Decision of the Supreme Court of North Carolina in *Dillon v. Winston-Salem*

In the *Dillon Case*, the Supreme Court of North Carolina held that, for the purpose of tort liability, he who controls a second person is liable under the doctrine of *respondeat superior* to any third person who is injured by the negligence of the second person. And this was held to be true even though no contract of employment existed between the first and second persons.

The plaintiff in the *Dillon Case* was the administratrix of Henry Lee Dillon, who had been killed on December 22, 1940, when he was nineteen years of age. 221 N. C. at 513, 20 S.E. 2d at 845. The action was brought for the wrongful death of Henry Lee Dillon. Dillon had been traveling in an automobile operated by Charles W. Cranford, who was fourteen years of age. 221 N. C. at 513, 20 S.E. 2d at 845. Dillon was directing Cranford where to drive the automobile and Cranford was driving it to the place he was directed by Dillon, though the two boys had never known each other before that night. 221 N. C. at 515, 20 S.E. 2d at 846-847. There was no evidence that Dillon told Cranford to drive in a negligent manner. The Court held that Cranford was guilty of negligence as a matter of law, and the Court further held that the negligence of Cranford was imputable to Dillon because Dillon was controlling Cranford's operation of the motor vehicle. The Court thereupon held that Dillon was guilty of contributory negligence and denied the plaintiff any recovery.

The Decision of the Supreme Court of North Carolina in *Williams v. Blue*

In *Williams v. Blue*, 173 N. C. 452, 92 S.E. 270, suit was brought by the plaintiff against John Blue, the owner of the automobile, Halbert Blue, the driver of the automobile, and Fannie A. Blue and J. W. Graham, passengers in the automobile. It was alleged in the complaint that the accident in which plaintiff was injured was caused by the negligence of Halbert Blue. Halbert Blue was acting as chauffeur for Fannie A. Blue and was acting

under the direction of J. W. Graham. There was no allegation that either Fannie A. Blue or J. W. Graham directed Halbert Blue to drive in a negligent manner or directed him to do any act which would be a negligent act. The defendants Fannie A. Blue and J. W. Graham demurred to the complaint on the ground that it failed to state a cause of action against them, and the trial court sustained the demurrer. On appeal to the Supreme Court of North Carolina, the Supreme Court reversed the trial court and ordered the defendants to answer over. 173 N. C. at 454, 92 S. E. at 270.

The Court said (173 N. C. at 453-454, 92 S.E. at 270):

"Ownership of an automobile is not essential to charge one with responsibility for its operation. . . . One in charge of operation of a motor vehicle, although he is neither the owner nor the person actually operating it, is nevertheless liable for injury sustained by third persons by reason of its negligent operation, *as the person actually operating the vehicle will be deemed his servant irrespective of whether he employed him or not.* 28 Cyc., p. 40." (Emphasis supplied.) This language was quoted with approval in *Dillon v. Winston-Salem*, *supra*.

The Application of the Decisions of *Williams v. Blue* and *Dillon v. Winston-Salem* to This Case

In this case, the record shows that the defendant McQueen was acting according "to the desires and directions of the defendants Farmers Bank & Trust Company and Federal Reserve Bank of Richmond . . ." (R. 3). Thus we have here the same situation with which the Supreme Court of North Carolina dealt in the *Dillon Case* and the *Williams Case*. And in each of those cases, the Supreme Court of North Carolina held that the person who directed another was liable for that other's negligence.

That the Circuit Court of Appeals failed to follow the decision in *Dillon v. Winston-Salem*, *supra*, apparently is practically conceded by respondents, for in their brief in opposition to the petition for certiorari they made no attempt to distinguish that case from this one, though it was relied upon in the petition.

In the *Williams Case*, as in this case (R. 9), there was an attack on the complaint for failure to state a cause of action. In the *Williams Case*, the Supreme Court of North Carolina held that those directing the second person were liable for his negligence, while in this case the Circuit Court of Appeals held that respondents, who were alleged to have been directing the receiver, were not liable for his negligence.

Conclusion

It is respectfully submitted that for the foregoing reasons this petition for rehearing should be granted, the petition for writ of certiorari should be granted, and the judgment of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

WHITFORD S. BLAKENEY,

GEORGE S. STEELE,

Counsel for Petitioners.

Certificate of Counsel

Counsel for petitioners respectfully certify that this petition for rehearing is filed in good faith and is not presented for delay.

WHITEFORD S. BLAKENEY,

GEORGE S. STEELE,

Counsel for Petitioners.